

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)
	)
DTV Build-out	)
	)
Requests for Extension of the	)
Digital Television Construction Deadline	)
	)
Commercial Television Stations	)
With May 1, 2002 Deadline	)

**ORDER**

**Adopted: March 10, 2005****Released: March 15, 2005**

By the Commission:

1. The Commission has before it 40 applications submitted by commercial television stations seeking extensions of the May 1, 2002, deadline for construction of their digital television (DTV) facilities pursuant to Section 73.624(d)(3)(iii) of the Commission's rules.<sup>1</sup> The applications are unopposed. For the reasons set forth below, we grant the applications and extend the DTV construction deadline for 39 stations to six months from the release date of this Order. We admonish 1 station for its continuing failure to timely construct, deny its application, and afford it six months from the release date of this Order to comply with the DTV construction rule. The station will also be subject to the remedial measures for DTV construction we have previously adopted.<sup>2</sup>

## **I. BACKGROUND**

2. To further the rapid implementation of a nationwide system of DTV, we adopted in 1997 an aggressive DTV construction schedule.<sup>3</sup> We determined that television stations affiliated with the ABC, CBS, Fox, and NBC television networks would be required to build DTV facilities in the ten largest television markets by May 1, 1999. Stations affiliated with these networks in television markets eleven through thirty were required to construct their DTV facilities by November 1, 1999. All other

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<sup>1</sup> 47 C.F.R. § 73.624(d)(iii). A complete list of stations is included in Appendix A. A number of these stations were previously considered by the Commission for extension of their DTV construction deadline. *See DTV Build-out*, FCC 03-250, released October 23, 2003 (*October 2003 Extension Order*).

<sup>2</sup> *See Remedial Measures For Failure to Comply with Digital Television Construction Schedule, Report and Order*, 18 FCC Rcd 7174 (2003) (*Remedial R&O*).

<sup>3</sup> *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809 (1997) (*Fifth Report and Order*).

commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations were to have constructed their stations by May 1, 2003.

3. A total of 1,680 television stations in all markets (representing approximately 98% of all stations) have been granted a DTV construction permit or license. There are a total of 1,491 stations now on the air broadcasting a digital signal, 682 with licensed facilities or program test authority and 809 operating pursuant to special temporary authority ("STA") or experimental DTV authority.

4. In the top thirty television markets, all 119 network-affiliated television stations are on the air in digital, 110 with licensed DTV facilities or program test authority and nine with STAs. In markets 1-10, of the 40 network affiliates due to be on the air by May 1, 1999, all are providing digital service, 38 with licensed DTV facilities and two with STAs. In markets 11-30, all 79 network affiliate stations required to be on the air by November 1, 1999, are providing digital service. Seventy-two have constructed their licensed DTV facilities and seven are on the air with STAs.

5. Approximately 1,230 commercial television stations were due to commence digital broadcasts by May 1, 2002. As of March 7, 2005, 1,059 of these stations (86 percent) are broadcasting a digital signal. In addition, approximately 373 noncommercial educational television stations were required to commence digital operations by May 1, 2003. As of January 5, 2005, 313 (84 percent) of these stations are broadcasting a digital signal.

6. The commercial stations in this proceeding were required to construct their DTV facilities by May 1, 2002, and have been granted at least two extensions by the staff. Their current extension must be considered by the Commission.<sup>4</sup>

## II. DISCUSSION

### A. Stations Granted Six Month Extensions

7. *Stations with Uncontrollable or Unforeseeable Delays.* A number of stations have encountered unforeseen or uncontrollable delays concerning the construction of their DTV facilities. WTGL-DT, Cocoa, Florida, did not receive a grant of its DTV construction permit until October 2003. Since that time, the station has been negotiating a lease with a tower owner and finalizing quotes from vendors.

8. KPXN-DT, San Bernardino, California, has completed preparations for construction and states that it has all but finalized the elements over which it had direct control. The station, however, claims to be at the mercy of the company it hired to build its tower. The station has exercised its contractual right and demanded that the tower be completed within 180 days.

9. WCAX-DT, Burlington, Vermont, experienced delays obtaining the necessary state approvals for a collocated tower facility on Mt. Mansfield. That station, as well as other area broadcasters, reached an agreement with the state, but one party to the agreement (the land owner) refused to sign. The station is continuing to work to try to resolve this matter and secure its shared tower location. The station states

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<sup>4</sup> See 47 C.F.R. § 73.624(d)(3)(iii).

that it is continuing to work on tower design and other environmental analyses in anticipation of resolution of the tower agreement matter.

10. WVAG-DT, Valdosta, Georgia, was previously unable to complete construction of its facilities due to local litigation that created a cloud on its ownership. That litigation has been resolved and the station has identified a source of funding for its DTV construction. The station has ordered its DTV equipment and is working to complete a lease for its tower site.

11. WFGC-DT, Palm Beach, Florida, has built out its entire digital operation but because of a dispute with the tower owner the station cannot commence digital transmissions on the proposed tower. The station is continuing to work with the tower owner to resolve the dispute.

12. WRFB-DT, Carolina, Puerto Rico, has all equipment in place to complete construction of its DTV facilities. The station experienced a last-minute delay in obtaining a permit from local authorities for the use of electric power at the station's transmitter site. The station states that it applied for the permit and was unexpectedly notified that a second inspection of its site was necessary. Until such permit is obtained, the station cannot complete construction and begin operating.

13. WKTV-DT, Utica, New York, did not receive a grant of its DTV construction permit until May 2004. In addition, a new owner of the station took control in November 2004. The station has submitted a reasonable timetable for construction. The station has retained consultants and solicited bids for its equipment.

14. The owner of WVXF-DT, Charlotte Amalie, Virgin Islands, only recently acquired the station in September 2004. The previous owner was unable to complete construction because the electrical grid serving the station's tower site was insufficient to support both an analog and DTV operation. The previous owner was unable to obtain the assistance of the local power authority to resolve the problem. Since it acquired the station, the new owner has determined that replacing the station's analog transmitter with a more efficient model will allow for both analog and DTV operation from the site. The new owner has ordered the replacement equipment and is awaiting its delivery. The new owner is also working to finalize a modified lease for location of its DTV facilities and to order its DTV equipment.

15. The owner of WFLI-DT, Cleveland, Tennessee, also only recently acquired the station in August 2004. The new owner quickly submitted an application to modify the station's construction permit that was subsequently granted. Since it acquired the station, the new owner has negotiated a lease for its tower location, submitted orders and down payments for its equipment and has scheduled delivery of equipment to coincide with a spring 2005 installation.

16. We recognize that the siting of DTV facilities remains a challenge for many broadcasters. Construction and tower siting delays of the type outlined above qualify as uncontrollable and unforeseeable delays that warrant extension of these stations' DTV construction deadlines.

17. *Stations Awaiting Commission Action.* The following stations only recently received a grant of a construction permit application, modification application, request for STA, or petition for rulemaking:

KATN-DT, Fairbanks, Alaska  
KJRR-DT, Jamestown, North Dakota  
KJUD-DT, Juneau, Alaska  
KLTU-DT, Tyler, Texas  
KTUU-DT, Anchorage, Alaska  
KTVA-DT, Anchorage, Alaska  
KVTU-DT, Laredo, Texas  
WABG-DT, Greenwood, Mississippi  
WDFX-DT, Ozark, Alabama  
WFGX-DT, Fort Walton Beach, Florida  
WGSA-DT, Baxley, Georgia  
WJSU-DT, Anniston, Alabama  
WVIB-DT, Key West, Florida  
WVNS-DT, Lewisburg, West Virginia

18. We find that in each of the above cases the stations took the necessary steps to complete the processing of their proposal, but, because of their recent grant, the stations had insufficient time to complete construction.

19. KFTR-DT, Ontario, California; KUPN-DT, Sterling, Colorado; WHTV-DT, Jackson, Michigan; and WTVA-DT, Tupelo, Mississippi; are awaiting action on their proposals. The owner of KWGC-DT, Casper, Wyoming, states that it was forced to sell its station because of financial difficulties and that it is awaiting the grant of a pending assignment application.<sup>5</sup> The pendency of Commission proceedings is the type of matter outside of the control of a station that warrants allowing additional time for the construction of DTV facilities.

20. *Financial Problems.* In our *DTV MO&O*, we recognized that some stations may not be in the financial position to provide DTV service by the May 1, 2002, deadline.<sup>6</sup> We announced a policy of allowing stations to seek an extension of their DTV construction deadline based upon the fact that the cost to construct their facility may exceed the station's financial resources. A number of stations have sought extensions based upon their financial difficulties.

21. The licensee of KTBY-DT, Anchorage, Alaska; KTVE-DT, El Dorado, Arkansas; and WFXI-DT, Morehead City, North Carolina; reports that it continues to experience financial difficulties delaying further construction of these stations. The licensee previously proposed to complete construction of its DTV facilities on a staggered timetable. Since its last extension request, the owner has completed construction of three other DTV facilities and is pursuing construction of these remaining stations.

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<sup>5</sup> See File No. BALCT-20030826ALR.

<sup>6</sup> See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 16 FCC Rcd 20594, 20610-12 (2001) (*DTV MO&O*).

22. Due to financial difficulties, the licensee of KXJB-DT, Valley City, North Dakota, has been unable to complete construction of the station's DTV facilities. The licensee has successfully completed construction of DTV facilities for two of its other stations and is working to complete the facilities for KXJB-DT despite continued financial hardship.

23. WRJM-DT, Troy, Alabama, was previously unable to complete construction because release of the final portion of its bank loan was delayed. The station now states that its cash flow does not support a bank or outside financing loan. The station is now relying on receivables to finance construction which it continues to pursue.

24. WENY-DT, Elmira, New York, has had difficulty securing a lending source for its DTV construction. The station thought it had secured a commitment from a lending source to consider its loan proposal but that proposal was not accepted. The owner also has not received any offers to purchase the station. The station is pursuing a proposal to discontinue operating its analog facility and broadcast digital-only. The station believes that a digital-only operation would save the station a sufficient amount of money that it could use to secure financing for a full-power DTV build-out. The station's proposal to discontinue analog operation is pending.

25. The licensee of WAKA-DT, Selma, Alabama, demonstrated that it was not financially able to complete construction of the station's DTV facilities. The owner of the station is the licensee of a number of other stations and has begun operating the DTV facilities of all but two of its stations. The owner has submitted a timetable for completion of its remaining DTV facilities including those of WAKA-DT.

26. The owners of WYLE-DT, Florence, Alabama, have been "self-financing" the construction of the station's DTV facilities. The station was able to obtain financing from a credit union for the purchase of its DTV transmitter. An unforeseen delay in the closing of the loan (due to previously undiscovered liens on the station owner's property) prevented the station from obtaining its financing. The station is working to clear the liens and close on its loan. Following closing, the station states that it will immediately purchase its DTV transmitter.

27. WCVI-DT, Christiansted, Virgin Island, experienced interference on its analog channel and states that it was forced to bear the expense of changing channels or "go out of business." Because of this unexpected expense, the station was left without sufficient funds to construct its DTV facilities. The station states that, over the past year, it has reestablished its DTV funds and has proposed a new DTV construction schedule. The station has negotiated with equipment manufacturers and will be paying deposits for its DTV equipment.

28. WEUX-DT, Chippewa Falls, Wisconsin, is also relying on financial hardship as its reason for not completing construction of its DTV facilities. The station's owner is the licensee of seven television stations (including WEUX-DT) and has completed construction of the DTV facilities of five of its stations. The station expects to order equipment and begin operation of its DTV facilities in the second quarter of 2005.

29. The licensee of KPCB-DT, Snyder, Texas, relies on donations as its only revenue source and previously demonstrated that financial hardship was preventing the timely construction of the DTV facilities for this station. The licensee has completed DTV construction for its three other television

stations and supplied a timetable for construction of the DTV facilities of this remaining station. The licensee is keeping to its timetable and has obtained much of its equipment. The licensee is in the process of obtaining the rest of its equipment and completing construction.

30. The parent company of WFXU-DT, Live Oak, Florida, is currently in bankruptcy reorganization. This, combined with the poor financial performance of the station has delayed a decision on the expenditure of funds for the station's DTV construction. The parent company expects to conclude the bankruptcy proceeding in 2005.

31. We find that these stations have met the requirements for further extension of the DTV construction deadline as stations experiencing financial hardships. The stations have provided documentary evidence to establish that the "costs of meeting the minimum build-out requirements exceed the station's financial resources."<sup>7</sup> Despite these setbacks, the stations have taken steps to further their DTV construction. Therefore, we grant these stations an extension to six months from the release date of this Order to complete their DTV facilities.

32. Although we grant these extension requests, we take this opportunity to remind television stations that timely implementation of DTV is the key to the success of a nationwide DTV system. We have found that expedited construction promotes DTV's competitive strength internationally, as well as domestically. We have also determined that rapid build-out ensures that the recovery of broadcast spectrum for future uses occurs as quickly as possible. We continue to expect stations seeking extensions to submit detailed justifications as to why they have been unable to complete construction of their facilities. As before, each station will be required to demonstrate that its failure to construct has been due to financial hardship, or circumstances that were either unforeseeable or beyond its control and that the station has taken all reasonable steps to resolve the problem expeditiously. We continue to expect such requests to be supported by documentation, and for stations to be able to demonstrate each step that was taken to complete construction or to outline each unforeseeable or uncontrollable delay or event. Only when we receive a fully supported request, will we allow an additional extension of the construction period.

### C. Stations Admonished For Failure To Timely Construct

33. In our *Remedial DTV R&O*, we announced a series of measures that we would employ whenever we determined that a television station had failed to complete construction of its DTV facilities and had failed to adequately justify an extension of its DTV construction permit.<sup>8</sup> Upon examination of their extension applications, we have determined that 1 station has not justified its failure to complete construction of its DTV facilities.

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<sup>7</sup> *Id.*

<sup>8</sup> See *DTV Remedial R&O*, *supra*.

34. KUAM-DT, Agana, Guam, continues to rely on prior natural disasters and general depression in the economy of Guam as its sole reasons for being unable to complete construction. While we acknowledge the obstacles faced by Guam stations, KUAM-DT has not explained whether it has taken any steps within its control to complete construction of its DTV facilities. Stations may not simply rely on financial hardship as their excuse for failing to complete DTV construction in a timely fashion. We expect that even stations with financial difficulties will provide a timetable for construction, and make at least some progress in constructing their DTV facilities. Furthermore, while KUAM-DT states that it is pursuing a channel modification, no such application has been filed nor has the station explained why it has been unable to complete this task.

35. We, therefore, deny this station's request for an unqualified extension and admonish it for its continuing failure to comply with its DTV construction obligation. The station is provided six months to comply with the DTV construction rule. The stations must submit a report (in letter form with the Secretary's office), within thirty days of the release date of this Order, outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Sixty days after the initial report, the station must submit a report (once again in letter form with the Secretary's office), detailing its progress on meeting its proposed construction milestones and justifying any delays it may have encountered. If at any time during this six-month period, the station fails to comply with the reporting requirements or fails to demonstrate that it is taking all reasonable steps to complete construction, or we otherwise find that the station has acted in bad faith, we will consider the imposition of additional sanctions.

36. The station should understand that, as a result of being placed in the remedial program, the burden will be greater to demonstrate the propriety of any failure to complete its DTV construction. If at the end of the six-month period, the station has not completed construction, we will issue a Notice of Apparent Liability unless the station can demonstrate that its inability to complete construction was due to extraordinary and compelling circumstances, such as a new, unanticipated, intervening event. The station will be required to fully detail and document the delays it has experienced and must show that it took every reasonable step to prevent such delays.

### III. CONCLUSION

37. ACCORDINGLY, IT IS ORDERED That, pursuant to Section 73.624(d)(3)(iii) of the Commission's Rules, 47 C.F.R. § 73.624(d)(3)(iii), the applications of the television stations set forth in Appendix A of this Order for extension of the digital television construction deadline ARE GRANTED and the digital television construction deadline IS EXTENDED to six months from the release date of this Order.

38. IT IS FURTHER ORDERED, That the television station set forth in Appendix B of this Order IS ADMONISHED for its continuing failure to comply with its DTV construction obligation, that its application for extension of its DTV construction deadline IS DENIED, and that the station IS AFFORDED until six months from the release date of this Order to come into compliance with the Commission's DTV construction rule. The station must submit a report (in letter form with the Secretary's office), within thirty days of the release date of this Order, outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Sixty days after the initial report, the station must submit a report (once again in letter form with the Secretary's office), detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary



**APPENDIX A**  
**Stations Granted Sixth-Month Extension**

CALL	FAC ID	FILE NUMBER	CH	CITY	ST
KATN-DT	13813	BEPCDT-20040324AEX	18	FAIRBANKS	AK
KFTR-DT	60549	BEPCDT-20040224ABI	47	ONTARIO	CA
KGWC-DT	63177	BEPCDT-20040224ACA	15	CASPER	WY
KJRR-DT	55364	BEPCDT-20040409ABD	14	JAMESTOWN	ND
KJUD-DT	13814	BEPCDT-20040324AFA	11	JUNEAU	AK
KLTV-DT	68540	BEPCDT-20040220ABV	38	TYLER	TX
KPCB-DT	77452	BEPCDT-20041208AAM	10	SNYDER	TX
KPXN-DT	58978	BEPCDT-20040224ABE	38	SAN BERNARDINO	CA
KTBY-DT	35655	BEPCDT-20040223AOU	20	ANCHORAGE	AK
KTUU-DT	10173	BEPCDT-20040304ABY	18	ANCHORAGE	AK
KTVA-DT	49632	BEPCDT-20040322AGS	28	ANCHORAGE	AK
KTVE-DT	35692	BEPCDT-20040304ABI	27	EL DORADO	AR
KUPN-DT	63158	BEPCDT-20040224ABZ	23	STERLING	CO
KVTV-DT	33078	BEPCDT-20040224ABO	14	LAREDO	TX
KXJB-DT	49134	BEPCDT-20040223AOY	38	VALLEY CITY	ND
WABG-DT	43203	BEPCDT-20040223AQQ	54	GREENWOOD	MS
WAKA-DT	701	BEPCDT-20040223AQP	55	SELMA	AL
WCAX-DT	46728	BEPCDT-20040218ALN	53	BURLINGTON	VT
WCVI-DT	83304	BEPCDT-20041122ADR	23	CHRISTIANSTED	VI
WDFX-DT	32851	BEPCDT-20041112AEP	33	OZARK	AL
WENY-DT	71508	BEPCDT-20040223AQW	55	ELMIRA	NY
WEUX-DT	2709	BEPCDT-20041202ACJ	49	CHIPPEWA FALLS	WI
WFGC-DT	11123	BEPCDT-20040311ACV	49	PALM BEACH	FL
WFGX-DT	6554	BEPCDT-20040224ABB	25	FORT WALTON BEACH	FL
WFLI-DT	72060	BEPCDT-20041221ABM	42	CLEVELAND	TN
WFXI-DT	37982	BEPCDT-20040223AOR	24	MOREHEAD CITY	NC
WFXU-DT	22245	BEPCDT-20041216AEG	48	LIVE OAK	FL
WGSA-DT	69446	BEPCDT-20040227ABW	35	BAXLEY	GA
WHTV-DT	29706	BEPCDT-20040223AOS	34	JACKSON	MI
WJSU-DT	56642	BEPCDT-20041229ABV	58	ANNISTON	AL
WKTV-DT	60654	BEPCDT-20040324AFF	29	UTICA	NY
WRFB-DT	54443	BEPCDT-20041112ADX	51	CAROLINA	PR
WRJM-DT	62207	BEPCDT-20040322ACP	48	TROY	AL
WTGL-DT	24582	BEPCDT-20040420AAK	53	COCOA	FL
WTVA-DT	74148	BEPCDT-20040504ABD	8	TUPELO	MS
WVIB-DT	27387	BEPCDT-20040422AAW	12	KEY WEST	FL
WVNS-DT	74169	BEPCDT-20040224ABG	8	LEWISBURG	WV
WVXF-DT	3113	BEPCDT-20041216ABD	48	CHARLOTTE AMALIE	VI
WYLE-DT	6816	BEPCDT-20041124ABU	20	FLORENCE	AL

**APPENDIX B**  
**Stations Admonished For Failure To Timely Construct**

CALL	FAC ID	FILE NUMBER	CH	CITY	ST
KUAM-DT	51233	BEPCDT-20040220AAD	2	AGANA	GU